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 UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JERRY NEHL BOYLAN,

Defendant.

No. CR 22-482-GW

STIPULATION AND JOINT REQUEST FOR  
 A PROTECTIVE ORDER REGARDING  
 DISCOVERY CONTAINING PERSONAL  
 IDENTIFYING INFORMATION

PROPOSED ORDER FILED SEPARATELY

Plaintiff, United States of America, by and through its counsel  
 of record, the United States Attorney for the Central District of  
 California and Assistant United States Attorneys Mark A. Williams,  
 Matthew W. O'Brien, Brian R. Faerstein, and Juan M. Rodriguez, and  
 defendant JERRY NEHL BOYLAN ("defendant"), by and through his  
 counsel of record, Deputy Federal Public Defenders Georgina

1 Wakefield, Gabriela Rivera, and Julia Deixler (collectively, the  
2 "parties"), for the reasons set forth below, request that the Court  
3 enter the proposed protective order (the "Protective Order")  
4 governing the use and dissemination of personal identifying  
5 information ("PII") of real persons pursuant to Federal Rule of  
6 Criminal Procedure Rule 16(d)(1).

7 Introduction and Grounds for Protective Order

8 1. Defendant is charged in this matter with a violation of 18  
9 U.S.C. § 1115: Misconduct or Neglect of Ship Officer. Defendant is  
10 released on bond pending trial.

11 2. A protective order is necessary because the government is  
12 being ordered to produce to the defense materials containing third  
13 parties' PII, specifically, complete forensic images of data  
14 extractions from four third-party digital devices, identified as FBI  
15 Device Nos. 1B136, 1B174, 1B177, and 1B290 (the "Subject Data"),  
16 that the defense will search pursuant to further search parameters  
17 to be determined by the Court. (See Dkt. Nos. 39, 40.) The  
18 government believes that disclosure of the Subject Data without  
19 limitation risks the privacy and security of the information's  
20 legitimate owners. Because the government has an ongoing obligation  
21 to protect third parties' PII, the government cannot produce to  
22 defendant an unredacted set of the Subject Data without the Court  
23 entering the Protective Order. In addition, in ordering the  
24 government to make available the Subject Data to the defense, the  
25 Court directed that the "parties are to discuss the terms of an  
26 appropriate protective order." (Dkt. No. 39 at 3.)

27 3. The purpose of the Protective Order is to (a) allow the  
28 government to comply with the Court's Order regarding the Subject

1 Data (Dkt. No. 40) while protecting this sensitive information from  
2 unauthorized dissemination, and (b) provide the defense with  
3 sufficient information to adequately represent defendant. To be  
4 clear, the proposed Protective Order is intended to supplement, not  
5 supplant, the parameters and procedures for the defense's review of  
6 the Subject Data as ordered by the Court.

7 Definitions

8 4. The parties agree to the following definitions:

9 a. "PII Materials" includes any information that can be  
10 used to identify a person, including a name, address, date of birth,  
11 Social Security number, driver's license number, telephone number,  
12 account number, email address, or personal identification number.

13 b. "Confidential Information" refers to any document or  
14 information containing PII Materials that the government produces to  
15 the defense pursuant to this Protective Order and any copies  
16 thereof.

17 c. "Defense Team" includes (1) defendant's counsel of  
18 record ("defense counsel"); (2) other attorneys at defense counsel's  
19 law firm who may be consulted regarding case strategy in this case;  
20 (3) defense investigators who are assisting defense counsel with  
21 this case; (4) retained experts or potential experts; and  
22 (5) paralegals, legal assistants, and other support staff to defense  
23 counsel who are providing assistance on this case. The Defense Team  
24 does not include defendant, defendant's family members, or any other  
25 associates of defendant.

26 d. Notwithstanding any of the terms and conditions set  
27 forth below, with regards to the complete forensic images of the  
28 Subject Data, which the government will designate as Confidential

1 Information, under no circumstances shall the Defense Team,  
2 defendant, defendant's family members, or any other associates of  
3 defendant have access to the complete forensic images of the Subject  
4 Data; the only individual who shall have access to the Subject Data  
5 shall be the individual identified by the defense and designated by  
6 the Court to conduct an initial review of the Subject Data  
7 (hereinafter, the "Forensic Analyst"), subject to the search  
8 parameters to be ordered by the Court (see Dkt. 40). Once the  
9 Forensic Analyst reviews the Subject Data and identifies and  
10 isolates material, if any, responsive to the applicable search  
11 parameters (hereinafter, the "Seized Material"), the Seized Material  
12 shall also be deemed Confidential Information and must be treated in  
13 accordance with all other terms of this Protective Order. The  
14 Defense Team and defendant may only have access to the Seized  
15 Material, subject to the terms set forth below.

16 Terms of the Protective Order

17 5. The parties jointly request the Court enter the Protective  
18 Order, which will permit the government to produce Confidential  
19 Information in a manner that preserves the privacy and security of  
20 third parties. The parties agree that the following conditions in  
21 the Protective Order will serve these interests:

22 a. The government is authorized to provide defense  
23 counsel with Confidential Information marked with the following, or  
24 substantially similar, legend: "CONFIDENTIAL INFORMATION -- CONTENTS  
25 SUBJECT TO PROTECTIVE ORDER." The government may put that legend on  
26 the digital medium (such as DVD or hard drive) or simply label a  
27 digital folder on the digital medium to cover the content of that  
28 digital folder.

1           b. If defendant objects to a designation that material  
2 contains Confidential Information, the parties shall meet and  
3 confer. If the parties cannot reach an agreement regarding  
4 defendant's objection, defendant may apply to the Court to have the  
5 designation removed.

6           c. Defendant and the Defense Team agree to use the  
7 Confidential Information solely to prepare for any pretrial motions,  
8 plea negotiations, trial, and sentencing hearing in this case, as  
9 well as any appellate and post-conviction proceedings related to  
10 this case.

11           d. The Defense Team shall not permit anyone other than  
12 the Defense Team to have possession of Confidential Information,  
13 including defendant, while outside the presence of the Defense Team.

14           e. At no time, under no circumstance, will any  
15 Confidential Information be left in the possession, custody, or  
16 control of defendant, regardless of defendant's custody status.

17           f. Defendant may review Confidential Information only in  
18 the presence of a member of the Defense Team, who shall ensure that  
19 defendant is never left alone with any Confidential Information. At  
20 the conclusion of any meeting with defendant at which defendant is  
21 permitted to view Confidential Information, defendant must return  
22 any Confidential Information to the Defense Team, and the member of  
23 the Defense Team present shall take all such materials with him or  
24 her. Defendant may not take any Confidential Information out of the  
25 room in which defendant is meeting with the Defense Team.

26           g. Defendant may see and review Confidential Information  
27 as permitted by this Protective Order, but defendant may not copy,  
28 keep, maintain, or otherwise possess any Confidential Information in

1 this case at any time. Defendant also may not write down or  
2 memorialize any data or information contained in the Confidential  
3 Information.

4 h. The Defense Team may review Confidential Information  
5 with a witness or potential witness in this case, including  
6 defendant. A member of the Defense Team must be present if  
7 Confidential Information is being shown to a witness or potential  
8 witness. Before being shown any portion of Confidential  
9 Information, however, any witness or potential witness must be  
10 informed of, and agree in writing to be bound by, the requirements  
11 of the Protective Order. No member of the Defense Team shall permit  
12 a witness or potential witness to retain Confidential Information or  
13 any notes generated from Confidential Information.

14 i. The Defense Team shall maintain Confidential  
15 Information safely and securely, and shall exercise reasonable care  
16 in ensuring the confidentiality of those materials by (1) not  
17 permitting anyone other than members of the Defense Team, defendant,  
18 witnesses, and potential witnesses, as restricted above, to see  
19 Confidential Information; (2) not divulging to anyone other than  
20 members of the Defense Team, defendant, witnesses, and potential  
21 witnesses, the contents of Confidential Information; and (3) not  
22 permitting Confidential Information to be outside the Defense Team's  
23 offices, homes, vehicles, or personal presence.

24 j. To the extent that defendant, the Defense Team,  
25 witnesses, or potential witnesses create notes that contain, in  
26 whole or in part, Confidential Information, or to the extent that  
27 copies are made for authorized use by members of the Defense Team,  
28 such notes, copies, or reproductions become Confidential Information

1 subject to the Protective Order and must be handled in accordance  
2 with the terms of the Protective Order.

3 k. The Defense Team shall use Confidential Information  
4 only for the litigation of this matter and for no other purpose.  
5 Litigation of this matter includes any appeal filed by defendant and  
6 any motion filed by defendant pursuant to 28 U.S.C. § 2255. In the  
7 event that a party needs to file Confidential Information with the  
8 Court or divulge the contents of Confidential Information in court  
9 filings, the filing should be made under seal. If the Court rejects  
10 the request to file such information under seal, the party seeking  
11 to file such information publicly shall provide advance written  
12 notice to the other party to afford such party an opportunity to  
13 object or otherwise respond to such intention. If the other party  
14 does not object to the proposed filing, the party seeking to file  
15 such information shall redact any Confidential Information and make  
16 all reasonable attempts to limit the divulging of Confidential  
17 Information.

18 l. Confidential Information shall not be used by the  
19 defendant or Defense Team, in any way, in any other matter, absent  
20 an order by this Court. All materials designated subject to the  
21 Protective Order maintained in the Defense Team's files shall remain  
22 subject to the Protective Order unless and until such order is  
23 modified by this Court. Within 30 days of the conclusion of  
24 appellate and post-conviction proceedings, defense counsel shall  
25 return all Confidential Information, certify that such materials  
26 have been destroyed, or certify that such materials are being kept  
27 pursuant to the California Business and Professions Code and the  
28 California Rules of Professional Conduct.

1           m. In the event that there is a substitution of counsel  
2 prior to when such documents must be returned, new defense counsel  
3 must be informed of, and agree in writing to be bound by, the  
4 requirements of the Protective Order before the undersigned defense  
5 counsel transfers any Confidential Information to the new defense  
6 counsel. New defense counsel's written agreement to be bound by the  
7 terms of the Protective Order must be returned to the Assistant U.S.  
8 Attorney assigned to the case. New defense counsel then will become  
9 the Defense Team's custodian of materials designated subject to the  
10 Protective Order and shall then become responsible, upon the  
11 conclusion of appellate and post-conviction proceedings, for  
12 returning to the government, certifying the destruction of, or  
13 retaining pursuant to the California Business and Professions Code  
14 and the California Rules of Professional Conduct all Confidential  
15 Information.

16           n. Defense counsel agrees to advise the Forensic  
17 Analyst, defendant, and all members of the Defense Team of their  
18 obligations under the Protective Order and ensure their agreement to  
19 follow the Protective Order, prior to providing the Forensic  
20 Analyst, defendant, and members of the Defense Team with access to  
21 any materials subject to the Protective Order.

22           o. Defense Counsel has conferred with defendant  
23 regarding this stipulation and the proposed order thereon, and  
24 defendant agrees to the terms of the proposed order.

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1 p. Accordingly, the parties have agreed to request that  
2 the Court enter a protective order in the form submitted herewith.

3 IT IS SO STIPULATED.

4 DATED: 5/3/2023

E. MARTIN ESTRADA  
United States Attorney

6 MACK E. JENKINS  
Assistant United States Attorney  
7 Chief, Criminal Division

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Assistant United States Attorney

13 Attorneys for Plaintiff  
UNITED STATES OF AMERICA

14  
15 DATED: 5/3/2023

/s/ with email authorization  
16 GEORGINA WAKEFIELD  
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18 JULIA DEIXLER  
Attorneys for Defendant  
19 JERRY NEHL BOYLAN  
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